

APR 6
CHARLES E. L.

No. 713

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA, INTERSTATE COM-
MERCE COMMISSION, ET AL., APPELLANTS

v.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANTS

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OPINION BELOW

The opinion of the district court (R. 38) is reported in 31 F. Supp. 35.

JURISDICTION

The judgment of the district court was entered January 24, 1940 (R. 34-35). The petition for appeal (R. 36) was filed February 5, 1940, and the order allowing the appeal (R. 48) was entered the same day. On March 4, 1940, this Court noted

probable jurisdiction. Jurisdiction is conferred on this Court by Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 938, 28 U. S. C. Sec. 345), and by the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, 220, 28 U. S. C. Secs. 47, 47a).

QUESTION PRESENTED

Whether Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, confers upon the Interstate Commerce Commission power to establish qualifications and maximum hours of service for all employees of common and contract motor carriers, in which case all such employees are exempt from the maximum hour and overtime provisions of the Fair Labor Standards Act of 1938; or

Whether the Commission's power extends only to employees whose duties affect the safety of operation of motor vehicles, in which case employees whose duties do not affect safety of operation are subject to the maximum hour and overtime provisions of the Fair Labor Standards Act.

STATUTES INVOLVED

The Motor Carrier Act, 1935 (August 9, 1935, c. 498, 49 Stat. 543, 49 U. S. C., Supp. V, Sec. 301 ff.) provides:

SEC. 204 (a). It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that

end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment * * *

Other provisions of the Motor Carrier Act referred to in this brief are set forth in the Appendix.

The Fair Labor Standards Act of 1938 (June 25, 1938, c. 676, 52 Stat. 1060, 1063, provides:

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the

effective date of this section [October 24, 1938],

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed [29 U. S. C., Supp. V, Sec. 207].

SEC. 13 (b). The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act [29 U. S. C., Supp. V, Sec. 213 (b)].

Reading the provisions of the two statutes together, it will be seen that as regards the regulation of hours of labor of employees of interstate motor carriers, the Fair Labor Standards Act begins where the Motor Carrier Act ends. The exemption from the maximum hour and overtime requirements of the Fair Labor Standards Act applies to those employees of motor carriers, and only those,

as to whom the Interstate Commerce Commission has power, under Section 204 of the Motor Carrier Act, to establish qualifications and maximum hours of service.

STATEMENT

The Motor Carrier Act, 1935, became effective October 1, 1935. Shortly thereafter the Interstate Commerce Commission on its own motion instituted a proceeding entitled *Ex parte No. MC-2, 3-M. C. C. 665*, for the purpose of prescribing maximum hours of service of motor-carrier employees pursuant to Section 204 (a) of the Motor Carrier Act. On December 29, 1937, the Commission issued a report concluding "that a weekly limitation of 60 hours on duty will meet the requirements of safety" for drivers of common and contract motor carriers (3 M. C. C. 665, 686). In the course of its report the Commission stated: "we feel that the Congress would have given us clearer and more explicit directions and a more definite statement of policy than it has done if it had intended to divorce our authority over maximum hours of service from safety of operation. * * * For these reasons, until the Congress shall have given us a more particular and definite command in the premises, we shall limit our regulations concerning maximum hours of service to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations" (3 M. C. C. 665, 667). The 60-hour workweek for drivers was made effective July 12, 1938.

Section 7 (a) of the Fair Labor Standards Act—providing for a 44-hour workweek during the first year of its operation, with time and a half for overtime, and a reduction to 42 hours per week on October 24, 1939, and to 40 hours on October 24, 1940—became effective on October 24, 1938. The exemption from Section 7 (a) of the Fair Labor Standards Act contained in Section 13, (b) (1) of that Act raised the question whether some 200,000 clerks, stenographers, bookkeepers, accountants, warehousemen and similar employees employed by common and contract motor carriers, whose duties do not affect safety of operation, were covered by the Motor Carrier Act and subject to the jurisdiction of the Interstate Commerce Commission, or whether they were covered by the Fair Labor Standards Act and subject to the jurisdiction of the Wage and Hour Division of the United States Department of Labor.

Accordingly the Interstate Commerce Commission instituted, again on its own motion, a proceeding entitled *Ex parte No. MC-28*, 13 M. C. C. 481 (R. 10), for the purpose of determining the extent of its jurisdiction under Section 204 (a) (1) and (2) of the Motor Carrier Act to prescribe qualifications and maximum hours of service of employees of common and contract motor carriers. After receiving briefs from interested parties and after hearing extensive oral argument, the Commission, on May 9, 1939, concluded that its power under Section 204 (a) (1) and (2) was "lim-

ited to prescribing qualifications and maximum hours of service for those employees of common and contract carriers whose activities affect the safety of operation of motor vehicles engaged in transporting passengers and property in interstate and foreign commerce, and for the purpose of promoting such safety of operation" (13 M. C. C. at 488; R. 18).¹ The same position was adopted by the Wage and Hour Division, which interpreted Section 13 (b) (1) of the Fair Labor Standards Act to exempt only those employees of common and contract motor carriers whose duties affect safety of operation (Interpretative Bulletin No. 9, Wage and Hour Division, p. 2).

On June 9, 1939, the American Trucking Associations, Inc., and five common carriers of motor vehicles subject to the Motor Carrier Act, 1935, the appellees herein, filed a petition (R. 20-23) with the Interstate Commerce Commission requesting the Commission to hold hearings and prescribe maximum hours of service for all employees of common and contract motor carriers subject to the Motor Carrier Act, including those employees whose activities in no way affect safety of operation of mo-

¹ The Commission specifically left open the question whether any employees, other than drivers, engage in activities which affect safety of operation (13 M. C. C. at 488; R. 18). This issue is not before the Court since appellees are seeking to compel the Commission to take jurisdiction over all employees of common and contract motor carriers whether their duties affect safety of operation or not.

tor vehicles. On June 15, 1939, the Commission (No. MC-C-139, 16 M. C. C. 497; R. 24) reaffirmed *Ex parte* No. MC-28 and held that it did not possess power under the Motor Carrier Act to prescribe qualifications and maximum hours of service for employees of common and contract motor carriers whose duties do not affect safety of operation. Accordingly the Commission found that it would be useless to hold the hearings requested by the appellees and, consequently, denied their petition (16 M. C. C. at 497; R. 25).

On June 22, 1939, the appellees instituted this action in the United States District Court for the District of Columbia pursuant to Section 205 (h) of the Motor Carrier Act, 1935 (49 U. S. C., Supp. V. Section 305 (h)).² By their complaint (R. 1-9) the appellees sought to set aside the order of the Commission of June 15, 1939, to obtain a decree that the Commission has power to establish qualifi-

² Section 205 (h) provides:

"Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I: *Provided*, That, where the Commission, in respect to any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction."

cations and maximum hours of service for all employees of common and contract motor carriers, and to compel the Commission, by mandatory injunction, to take jurisdiction of the petition filed by the appellees on June 9, 1939 (R. 9).

On June 28, 1939, and July 18, 1939, the Interstate Commerce Commission (R. 25) and the United States (R. 27), respectively, filed answers to the complaint of the appellees denying the power of the Commission to prescribe qualifications and maximum hours of service for employees of common and contract motor carriers whose activities do not affect safety of operation. On August 2, 1939, the appellees moved for judgment on the pleadings (R. 29). On September 9, 1939, the motion (R. 29) of Elmer F. Andrews, Administrator of the Wage and Hour Division, to intervene as a party defendant in support of the position of the Interstate Commerce Commission and the United States was granted by the court (R. 30). The intervenor's answer (R. 31) likewise denied the power of the Interstate Commerce Commission to prescribe maximum hours of service with respect to the employees in question, and asserted that these employees were subject to the provisions of the Fair Labor Standards Act.

A three-judge court was convened (R. 34; Section 205 (h) of the Motor Carrier Act, 49 U. S. C., Supp. V, Section 305 (h); Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 28 U. S. C.,

Sections 45, 47 (a)). The case was heard, by consent, on the appellees' motion for judgment on the pleadings (R. 34). The court held, Judge Letts dissenting, that the Interstate Commerce Commission was empowered by Section 204 (a) (1) and (2) of the Motor Carrier Act to prescribe maximum hours of service with respect to *all* employees of common and contract carriers by motor vehicle (R. 38). The decree of the court (R. 34), entered January 24, 1940, set aside the Commission's order of June 15, 1939, adjudged that the Commission had power under Section 204 (a) (1) and (2) of the Motor Carrier Act to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle, and directed the Commission to take jurisdiction of the appellees' petition in conformance with the opinion of the court.

The United States, the Interstate Commerce Commission, and the Administrator of the Wage and Hour Division have jointly appealed.³ Petition for appeal was filed February 5, 1940 (R. 36), and the order allowing the appeal was entered the same day (R. 48).

³ On February 5, 1940, Harold D. Jacobs, having succeeded Elmer F. Andrews as Administrator, was substituted for him as intervener (R. 35), and on March 25, 1940, Philip B. Fleming, having, in turn, succeeded Jacobs as Administrator, was by order of this Court substituted for him as intervener.

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

(1) In holding that the order entered June 15, 1939, by the Interstate Commerce Commission in the proceeding entitled "MC-C-139" is illegal and void, and in setting the order aside.

(2) In holding that the Commission is invested with jurisdiction and power, under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle; and in failing to hold, on the contrary, that the jurisdiction and power of the Commission is limited to those employees whose activities affect safety of operation.

(3) In requiring and directing the Commission to take jurisdiction, upon the petition of the appellees, in conformance with the opinion of the court.

(4) In failing to dismiss the petition of the appellees.

SUMMARY OF ARGUMENT

I

One of the primary purposes of the Motor Carrier Act, 1935, was the promotion and enhancement of safety of operation of all motor vehicles operated by motor carriers engaged in interstate and foreign commerce. It was solely to this end that Congress empowered the Interstate Com-

merce Commission to prescribe qualifications and maximum hours of service for employees of motor carriers.

The intent of Congress that only those employees of common and contract motor carriers whose duties affect safety of operation should be subject to regulation by the Commission is clear. Few statutory provisions have as demonstrative a legislative history as does Section 204 (a) (1) and (2) of the Motor Carrier Act. The Congressional intent is further revealed by an analysis of provisions of the Motor Carrier Act other than Section 204 (a) (1) and (2). These provisions point to "safety of operation" as the sole Congressional purpose in empowering the Commission to prescribe qualifications and maximum hours of service pursuant to Section 204 (a) (1) and (2). Federal statutes regulating hours of service in other fields of transportation and state motor carrier statutes, in the light of which the meaning of the Motor Carrier Act must be sought, indicate a legislative policy directed toward the end of "safety of operation." Finally, the fact that the regulatory power was conferred by the Motor Carrier Act upon an agency expert in transportation matters alone, unattended by the legislative standards traditionally guiding the regulation of hours of work, supports the view that Congress intended to limit the Commission's power to those employees whose activities affect safety of operation.

II

The purposes and the legislative history of the Fair Labor Standards Act afford additional support for the view that the coverage of Section 204 (a) (1) and (2) of the Motor Carrier Act is restricted to those employees engaged in activities affecting safety of operation. The exemption provided by Section 13 (b) (1) of the Fair Labor Standards Act with respect to those employees as to whom the Interstate Commerce Commission has power to prescribe qualifications and maximum hours of service was enacted by Congress upon the assumption that the Commission's power was limited to "safety" employees. Employees of motor carriers whose duties do not affect safety of operation are engaged in pursuits similar to those followed by millions of other employees within the scope of the Fair Labor Standards Act and, consequently, more properly fall within the scope of that statute than of the Motor Carrier Act.

ARGUMENT

I

CONGRESS INTENDED IN THE MOTOR CARRIER ACT TO EMPOWER THE INTERSTATE COMMERCE COMMISSION TO REGULATE MAXIMUM HOURS OF SERVICE OF ONLY THOSE EMPLOYEES WHOSE DUTIES AFFECT SAFETY OF OPERATION

Section 204 (a) (1) and (2) of the Motor Carrier Act gives the Interstate Commerce Commission power to "establish reasonable requirements with respect to * * * qualifications and maximum

hours of service of employees * * * of common and contract motor carriers. The sole question in this case is whether Congress, when it used the word "employees," intended to subject to regulation by the Commission all employees or only those employees whose duties affect safety of operation on the highways. It is the contention of the United States, of the Interstate Commerce Commission, and of the Administrator of the Wage and Hour Division that Congress intended to limit the word "employees" to those employees whose duties affect safety of operation on the highways, and that the Court should give effect to this intention of Congress.

There is some suggestion in the opinion below that the word "employees" is so clear in its meaning as not to require or permit interpretation. However, the conclusion of that court that "employees" means "all employees" obviously involves interpretation of the word, and the court engaged in further construction when it stated (R. 42-43) that the term "employees" did not include "executive officials, solicitors, and lawyers". And this Court has frequently held that such general terms as "person" or "persons" are to be interpreted in the light of the purposes sought by Congress in enacting the particular statute in question. Cf. *United States v. Palmer*, 3 What. 610, 631; *Lau Oe Baw v. United States*, 144 U. S. 47; *Ozawa v. United States*, 260 U. S. 178; *United States v.*

Thind, 261 U. S. 204. "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Church of the Holy Trinity v. United States*, 143 U. S. 457, 459.

By "employees" Congress meant only those employees whose duties affect safety of operation on the highways. The legislative history of the Motor Carrier Act reveals that the sole purpose of Congress in authorizing the Commission to regulate qualifications and maximum hours of service was to promote safety on the highways. Other provisions in the Motor Carrier Act likewise indicate that this was the exclusive intent of Congress, as do the many analogous federal and state statutes in the field of carrier regulation. The nature of the Commission's experience and the failure of Congress to set up standards of the sort customarily attending the regulation of hours is further proof of its limited purpose and intent.

1. *The Legislative History of Section 204 (a) (1) and (2).*—As first introduced on February 4, 1935, the bill which later became the Motor Carrier Act (S. 1629, 74th Cong., 1st Sess.) contained no provision authorizing the Interstate Commerce Commission to regulate qualifications or maximum hours of service of any employees, but merely empowered the Commission to investigate the need for establishing qualifications and maximum hours

of service of employees of motor carriers (S. 1629, Section 325).⁴ On February 27, 1935, Mr. Frank McManamy, then Chairman of the Legislative Committee of the Interstate Commerce Commission, appeared before the Senate Committee on Interstate Commerce and urged that the bill be amended so as to include the provision for regulation of qualifications and maximum hours of service of employees of common and contract motor carriers now contained in Section 204 (a) (1) and (2) of the Motor Carrier Act. Mr. McManamy's testimony shows plainly that he contemplated empowering the Commission to regulate the qualifications and maximum hours of service of only those employees whose duties affect safety of operation. His testimony follows:

Mr. McMANAMY. The other amendment to which I refer I think is more important because it relates to *safety*. In Section 2 (a) (1) and (2) of S. 394 there are provisions authorizing the Commission to establish reasonable requirements with respect to certain matters including "*qualifications of maximum hours of service of employees.*" Somewhat similar provisions appear in S. 1629, but they omitted the words above quoted. Instead, Section 325 authorizes the Commission to investigate and report on the need for such regulation. *Further investigation of the need for regulation of the*

⁴ This provision became Section 225 of the Act as finally enacted.

hours of service of employees engaged in interstate transportation should hardly be necessary because the hours of service of railroad employees have been regulated by law for 27 years and it has proven to be one of the most important provisions of all the safety legislation.

*The regulation of the hours of service of bus and truck operators is far more important from a safety standpoint than the regulation of the hours of service of railroad employees because the danger is greater. Locomotives and cars will stay on the rails and a moment's drowsiness or inattention on the part of the enginemen may not result in an accident. With highway traffic it is different because the vehicle must be guided by the operator. At the present time even the slowest moving trucks are operated at speeds of 44 feet per second or greater, therefore, 2 or 3 seconds' drowsiness or inattention to duty is almost certain to cause an accident. A further reason is that the regulations of many of the States contain such provisions and it would be unfair to allow interstate carriers to operate in disregard of such provisions. It is my view, therefore, that definite hours of service provisions should be included in the bill. This could be accomplished by inserting in Section 304 (a) (1) and (2), lines 9 and 15, page 8, following the word "records" in both lines, the words which appear in S. 394, as follows: "*qualifications and maximum hours of service of employees*" (Hearings*

on S. 1629 before the Committee on Interstate Commerce, United States Senate, 74th Cong., 1st Sess., pp. 122-123). [Italics supplied.]

The regulation of the hours of service of railroad employees to which Commissioner McManamy referred as qualifying the Commission to regulate the hours of employees of motor carriers and as demonstrating the desirability of such regulation from a safety standpoint, is limited to employees whose activities affect the safety of operations of trains, viz., "persons actually engaged in or connected with the movement of any train." Hours of Service Act of March 4, 1907, c. 2939, Sec. 2, 34

See also the statement of Senator Wheeler before the Senate Committee on Interstate Commerce on March 1, 1935. Senator Wheeler stated:

"It does seem to me that in the trucking business one of the things that should be done would be to regulate hours of service. I can see how extremely essential it is because of the fact that in the case of a man driving a truck or a bus should he fall asleep for a few seconds, his truck or bus goes into the ditch. We have all known of experiences of that kind. Consequently it does seem to me that in the interest of the safety of the people themselves riding on busses and likewise with reference to the safety of the general public on the highways, hours of service should be regulated" (Hearings on S. 1629, 74th Cong., 1st Sess., *supra*, p. 184).

There was ample additional testimony before the Senate Committee indicating that the sole reason for providing for the regulation of hours of service was to promote and foster safety of operation, and that the only employees intended to be subjected to such regulation were the drivers or operators of motor vehicles (*Id.* at pp. 260, 364).

Stat. 1415, as amended (45 U. S. C. Secs. 61-66). Obviously Commissioner McManamy did not mean that the Commission's experience in regulating the hours of railroad employees connected with the movements of trains showed either that the Commission was qualified to regulate the hours of *all* motor-carrier employees or that such all-inclusive regulation was desirable from the standpoint of safety. Rather he plainly sought only the regulatory power as to motor-carrier employees correlative with that already exercised by the Commission as to railroad employees. So also Commissioner McManamy's reference to state regulation was to regulation in the interest of safety—that is, regulation of the maximum hours of employees whose duties affect safety of operation, which, indeed, as shown *infra*, pp. 33-37, is the fullest extent of state regulation of motor carriers which has ever been attempted.

Following Commissioner McManamy's testimony, the Senate Committee on Interstate Commerce amended the bill to include the provision suggested by the Commissioner, which is now contained in Section 204 (a) (1) and (2) of the Motor Carrier Act. That the Committee was granting to the Commission only the power for which it had asked through Commissioner McManamy, is shown by the statement of Senator Wheeler on the floor of the Senate. Senator Wheeler, the Chairman of

the Senate Committee on Interstate Commerce and the sponsor of the bill, stated:

* * * the committee amended paragraphs (1) and (2) to confer power on the Commission to establish reasonable requirements with respect to the qualifications and maximum hours of service of employees of common and contract carriers, thus restoring provisions that were in the Rayburn bill, introduced in the 73rd Congress. This suggestion came to us, I think, from the chairman of the legislative committee of the Interstate Commerce Commission. Suggestions were made to us by some of the labor organizations that we ought to put in the bill at this time provisions specifically limiting the hours of labor;⁶ but by reason of the fact

⁶ Mr. William Green, President of the American Federation of Labor and Mr. George M. Harrison, Chairman of the Railway Labor Executives Association, both urged amendments specifically limiting the number of hours of service of *drivers* in the interest of safety of operation. See letter of Mr. Green to Representative Monaghan, H. Rep. No. 1645, 74th Cong., 1st Sess., p. 7; testimony of Mr. Harrison, Hearings Before Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 74th Cong., 1st Sess., pp. 246-7.

Although these proposed amendments were not adopted, their rejection, as is evident from Senator Wheeler's statement, was dictated by a desire not to tie the hands of the Interstate Commerce Commission by an inflexible provision as to hours rather than by any feeling that the amendments were too narrow because applicable only to drivers. To the same effect as Senator Wheeler's statement, see the statement of Representative Sadowski on the floor of the House (79 Cong. Rec., p. 12205).

that the Commission felt that they would like first to make a study of the matter, and then come back and report to Congress, or be given permission to establish these requirements later, *we left it as the Commission suggested*, giving them power to make the investigation and, if and when they found it necessary, to put in effect such rules and regulations as they might deem necessary" (79 Cong. Rec. 5632). [Italics supplied.]

That the purpose of Congress was to give the Commission power to regulate hours of service of only those employees whose duties affect safety of operation is likewise clear from the legislative history of the bill in the House of Representatives. The report of the House Committee on Interstate and Foreign Commerce expressly stated that one of the "basic principles of regulation of motor carriers as prescribed under this bill" was to:

(9) Establish reasonable requirements to promote safety of operation and to that end prescribe qualifications and maximum hours of service of employees and standards of equipment for all carriers (H. Rept. No. 1645, 74th Cong., 1st Sess., p. 3).

Further accenting the purpose of the bill to promote safety of operation of motor vehicles on the public highways through the prescription of qualifications and maximum hours of service, is the following statement made on the floor of the House by Representative Sadowski, who was in charge of the bill:

"The various regulatory features of the bill, which provides for supervision and the power to make rules, will

The striking and complete absence of any discussion either in the reports or on the floor of Congress, relating to employees other than those whose duties affect safety of operation on the highways further demonstrates that it was only these employees whom Congress had in mind when it passed the Motor Carrier Act. Not a word was said by anybody suggesting regulation of all employees. No mention was made of warehousemen or clerks or stenographers or bookkeepers or accountants. It can hardly be presumed that Con-

tend greatly to promote careful operation for safety on the highways, and I think I can speak for nearly all the members of the committee when I say that the Interstate Commerce Commission deserves a vote of confidence that they will formulate a set of reasonable rules, practical for the various types of carriers, including therein maximum labor-hours service on the highway" (79 Cong. Rec., p. 12206).

The views of other Congressmen were to the same effect. Representative Monaghan, in discussing the report of the House Committee on Interstate and Foreign Commerce, stated:

"I submit supplemental views on S. 1629, since I am convinced that the main provisions of regulation in the interest of safety, both to the public on the highways and to those employed in driving trucks and busses throughout the country is that which would regulate hours" (H. Rep. No. 1645, 74th Cong., 1st Sess., pp. 6, 7).

The following colloquy between Representatives Schneider and Crawford is to the same effect:

"Mr. SCHNEIDER. What is the opinion of the gentleman with reference to setting maximum hours for truck drivers in the interest of safety in the highways?

"Mr. CRAWFORD. By all means, we should have safety" (79 Cong. Rec., p. 12211).

gress intended to give the Commission a broad and all-inclusive power of regulation without ever having considered the problems which would arise in the regulation of the qualifications and hours of work of such employees.

The majority of the court below refused to take the legislative history into account in reaching its decision. "The circumstances under which the section was placed in the bill", said the court, "may possibly have created a situation not contemplated by its sponsors, but to say that this is true would be pure speculation, in which we have no right to indulge, and upon which we can base no conclusion" (R. 43-44). In the light of the legislative history of Section 204 (a) (1) and (2) discussed above, we submit that the court erred in holding that the appellants' assertion as to the intent of Congress was in the realm of "speculation." The court's refusal to consider that clearly evident intent led it into holding that the Interstate Commerce Commission had been granted a power for which it had not asked, by a Congress which had not intended to make the grant.

2. *Other provisions of the Motor Carrier Act.*—The intent of Congress to grant the Interstate Commerce Commission power to regulate qualifications and maximum hours of service of only those employees whose duties affect safety of operation is also revealed by other provisions of the Motor Carrier Act.

To begin with, Subsection (3) of Section 204 (a) of the Act illuminates the intent of Congress in Subsections (1) and (2). Section 204 (a) (3) gives the Commission power "to establish for private carriers of property by motor vehicle," if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment." From the fact that the Commission's power with respect to employees of private carriers is expressly limited to the promotion of "safety of operation," the majority of the court below deduced that the Commission's power under Section 204 (a) (1) and (2) was ~~not~~ so restricted, since those subsections contain no such express limitation.

But the differences in language clearly were occasioned by an entirely different reason—namely, the difference in the powers granted to the Commission in the different subsections. As to common carriers, Section 204 (a) (1) gave the

* Section 203 (a) (17) provides that as used in the Act "The term 'private carrier of property by motor vehicle' means any person not included in the terms 'common-carrier by motor vehicle' or 'contract carrier by motor vehicle' who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise."

Commission power to establish requirements, not merely with respect to qualifications and maximum hours of service, but also with respect to continuous and adequate service, transportation of baggage and express, accounts, records, reports and equipment. Section 204 (a) (2) granted the Commission similar, although not so broad powers over contract carriers. As to private carriers, however, Section 204 (a) (3) granted the Commission power only to prescribe qualifications, maximum hours of service, and standards of equipment. Thus, the powers granted with respect to common and contract carriers must, with the exception of qualifications, maximum hours of service, and equipment, be exercised with some other end in view than safety of operation, whereas all the powers granted with respect to private carriers were in the interest of safety. In the drafting of Section 204 (a) (1) and (2), Congress could not, therefore, provide that safety of operation was the end to be considered in the exercise of *all* of the powers granted, as it provided in Section 204 (a) (3) with reference to the limited powers granted over private carriers.

What Section 204 (a) (3) does show is that the word "employees" does not mean "all employees." In Section 204 (a) (3) the word "employees," though standing alone and unqualified, unquestionably and admittedly means only those employees whose duties affect safety of operation. The word

should not be given a different meaning in Subsection 204 (a) (1) and (2). As has been demonstrated, the legislative history shows that Congress contemplated regulation of qualifications and maximum hours of service only in the interest of safety, and hence undoubtedly intended the same result in all three subsections of Section 204 (a). From the standpoint of safety of operation on the highways, a private carrier is no different from a common or contract carrier. To hold that there is a greater power over qualifications and maximum hours of service in the case of common and contract carriers than in the case of private carriers "is to infer Congressional idiosyncrasy." *Keifer & Keifer v. R. F. C.*, 306 U. S. 381, 393.

Section 225⁹ likewise indicates that in dealing with qualifications and maximum hours of service Congress was concerned solely with safety. In substance this Section authorizes the Commission to investigate and report on the need for federal regulation with respect to two matters: (1) The

⁹ Section 225 reads as follows:

"The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicles; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter."

sizes and weight of motor vehicles, and (2) the qualifications and maximum hours of service of employees of motor carriers. Regulation of sizes and weight of motor vehicles is directly aimed at the promotion of safety of operation of such vehicles. In the light of the close physical connection, in Section 225, between the language authorizing investigation of the need for regulation of sizes and weight of vehicles and the language authorizing investigation of the need for regulation of qualifications and maximum hours of service, it seems clear that the purpose of the latter type of regulation is likewise the promotion of safety of operation. Nor is the Congressional purpose evidenced by this Section in any way weakened by the fact that the Commission was later given a direct power to act rather than to investigate and report back to Congress. See *supra*, pp. 15-16, 19.

The court below, rejecting the contention that these various provisions throw light upon the intent of Congress, relied upon Section 204 (b) of the Motor Carrier Act.⁴⁰ This section voided the provisions of any code for the motor-carrier in-

⁴⁰ Section 204 (b) reads as follows:

"204 (b). The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this part, shall have no force or effect after this section becomes effective."

dustry approved under the National Industrial Recovery Act insofar as the provisions of any such code were in conflict with action under the Motor Carrier Act. The court implied (R. 42) that the Motor Carrier Act was thus intended to take the place of the National Industrial Recovery Act in the field of motor transportation. But Section 204 (b) is not indicative of an intent that the Motor Carrier Act was to be a substitute for or a continuation of the Code.¹¹ It was inserted simply to avoid any possible question of conflict between the Code and a completely new and different system of regulation. Suggestions made by the motor carriers themselves for continuing the Code under the Motor Carrier Act were rejected at the hearings by Senator Wheeler, the sponsor of the bill in the Senate.¹² Furthermore, the purposes and ends

¹¹ The code for the motor carrier industry was Code No. 278, Code of Fair Competition for the Trucking Industry, approved February 10, 1934, Article V A (1), (2), (3).

¹² Significant in this connection is the colloquy between Mr. Edward S. Brashers, the general counsel for The American Trucking Associations, Inc., and Senator Wheeler at the hearings on March 4, 1935, before the Senate Committee on Interstate Commerce (Hearings on S. 1629, 74th Cong., 1st Sess., *supra*, pp. 380-381):

"Mr. BRASHERS. The present code for the trucking industry should be provided for in this law and could be transferred to the supervision of the Coordinator, the Coordinator taking the place generally now occupied by the National Recovery Administration.

"The CHAIRMAN (Senator WHEELER). The trouble with your suggesting about writing into this bill a continuation

sought to be achieved by the National Industrial Recovery Act were totally different from those sought in the Motor Carrier Act. The National Industrial Recovery Act was a recovery measure seeking to eliminate unfair competition among employers and to afford to employees the protection of minimum wages, maximum hours, and the right of collective bargaining, while the Motor Carrier Act is solely a transportation statute.

3. *Federal Statutes Regulating Hours of Service in Other Fields of Transportation and State Motor Carrier Statutes.*—The propriety of looking to analogous statutes for any illumination they may afford as to the Congressional intent in the Motor Carrier Act is not in doubt. In *Keifer & Keifer v. R. F. C.*, 306 U. S. 381, in reaching the conclusion that a Regional Agricultural Credit Corporation was subject to suit, even though Congress had not

of the code, it seems to me, is that it is entirely impracticable from the standpoint of the legislative situation, because we cannot deal with your industry and say that the code should be carried forward in this bill, and leave all the other codes out. I do not think that is a practical suggestion from the standpoint of legislation."

Of course, since the codes were invalidated by the decision of this Court in *Schechter Poultry Corp. v. United States*, 295 U. S. 495, on May 27, 1935, Section 204 (b), which became effective October 1, 1935, was a superfluity. Its presence in the Act as finally enacted is explicable by the fact that, when Section 204 (b) made its first appearance in the draft of S. 1629, reported out by the Senate Committee on April 12, 1935, the N. R. A. codes were still in effect.

expressly authorized suits against it, the Court placed heavy reliance on the Congressional policy evidenced by other statutes. It said (p. 389):

It is not a textual problem; for Congress has not expressed its will in words. Congress may not even have had any consciousness of intention. The Congressional will must be divined, and by a process of interpretation which, in effect, is the ascertainment of policy immanent not merely in the single statute from which flow the rights and responsibilities of Regional, but in a series of statutes utilizing corporations for governmental purposes and drawing significance from dominant contemporaneous opinion regarding the immunity of governmental agencies from suit.

Federal regulatory statutes in the fields of transportation by rail, sea, and air demonstrate a clear Congressional policy. In the case of railroad carriers, the Hours of Service Act of March 4, 1907, c. 2939, Secs. 1, 2, 34 Stat. 1415, as amended (45 U. S. C. Secs. 61-66), imposes restrictions on the hours of labor of employees who are "actually engaged in or connected with the movement of any train" in interstate transportation.¹³ In this connection it will be recalled that Commissioner Mc-

¹³ In *Chicago and Alton Railroad Co. v. United States*, 247 U. S. 197, 199, this Court recognized the "safety" character of the statute, stating:

"The purpose of the statute is to promote safety in operating trains by preventing the excessive mental and physical strain which usually results from remaining too long at an exacting task."

Manamy in his testimony before the Senate Committee on Interstate Commerce urged the Committee to provide the Interstate Commerce Commission with powers over maximum hours of service in the field of motor-carrier transportation analogous to the powers already possessed by the Commission in the field of rail transportation. See *supra*, pp. 16-17.

In the case of carriers by water, the Seamen's Act (March 4, 1915, c. 153, Secs. 2, 13, 14, 38 Stat. 1164, 1169, 1170-1184) prescribes requirements with respect to qualifications and maximum hours of service of members of ships' crews, and equipment of ocean-going vessels.¹⁴

In the case of carriers by air, the Civil Aeronautics Act (June 23, 1938, c. 601, 52 Stat. 1007 (49 U. S. C. Sec. 551)) imposes the duty upon the Civil Aeronautics Authority, "to promote safety of flight in air commerce by prescribing * * * (5) Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees, of air carriers." Also, under Section 602 (b) of the Act, the Authority may impose requirements as to qualifications of airmen as it may determine "to be necessary to assure safety in air commerce."

¹⁴ This Court characterized all of these provisions as "safety provisions." *O'Hara v. Luckenbach S. S. Co.*, 269 U. S. 364, 367. In that case the Court stated:

"The general purpose of the Seamen's Act is not only to safeguard the welfare of the seamen as workmen, but, as set forth in the title, also 'to promote safety at sea.'"

The majority of the court below did not take cognizance of the well-established policy expressed in these statutes. Instead the Court pointed out (R. 41) that the limited scope of the Hours of Service Act was due to the restrictive definition of "employees" as "persons actually engaged in or connected with the movement of any train." And the Court stated that since Congress could have so defined the term "employees" in the Motor Carrier Act, its failure to do so indicated a contrary intention. But the Motor Carrier Act was not a statute dealing primarily with employees, as was the Hours of Service Act, and that is doubtless the explanation why it contains no definition of the term "employee." Furthermore, no such burden of draftsmanship is necessary where Congress has made its purpose clear. Just as in the *Keifer* case, in the absence of words specifically providing that Regional Agricultural Credit Corporation may "sue or be sued," this Court looked for the intent of Congress. In analogous statutes, so here, the Court may find that intent expressed, not only in the legislative history, but also in analogous statutes. To hold that Congress intended to treat employees of motor carriers differently from employees of carriers by rail, air, and water "is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none." *Keifer & Keifer v. R. F. C.*, 306 U. S. 381, 394.

State statutes regulating intrastate motor transportation throw further light upon the intent of Congress in enacting Section 204 (a) (1) and (2) of the Motor Carrier Act. Mr. Joseph B. Eastman, then Federal Coordinator of Transportation, succinctly stated the purpose of these statutes in his report entitled "Hours, Wages, and Working Conditions in the Intercity Motor Transport Industries," Part III, (1936), at p. 13:

The principal objective of State legislation limiting the hours of motor-carrier employees has been to protect the traveling and shipping public, and the employees themselves, by preventing accidents likely to be occasioned by drivers who attempt to serve at the wheel when exhausted from overlong hours on duty.

At the time that the Motor Carrier Act was under consideration in Congress, forty states had regulatory measures relating to the hours of service of employees of intrastate motor carriers. It is of the utmost significance that every one of these statutes applied exclusively to drivers or helpers on the vehicles.¹⁵ In no case were employees whose activi-

¹⁵ *Alabama*, General Acts, 1931, No. 273, Sec. 15; General Acts, Extra Session, 1932, No. 159, Sec. 20 (drivers and chauffeurs); *Arizona*, Rev. Code Supp., 1936, Sec. 1682n (operators and helpers); *Arkansas*, Acts 1931, Act No. 157, Sec. 1 (drivers); *California*, Stats. of 1935, Ch. 27, Sec. 602 (a); Stats. of 1935, Ch. 27, Sec. 602 (b) (drivers); *Colorado*, S. L. 1927, Ch. 134, Sec. 18; Public Utilities Comm. Rule 29

ties were not thus directly related to safety of operation embraced within the terms of these statutes.

The scope of these state regulatory acts bears significantly on the meaning that Congress intended to attach to Section 204 (a) (1) and (2)

(drivers and operators); *Connecticut*, Gen. Stats., Jan. Sessions, 1931, 1933, 1935, Ch. 82, Sec. 572c (operators); *Delaware*, Laws 1935, Ch. 39, Sec. 7 (2) (drivers and helpers); *Florida*, Acts of 1931, Ch. 14764, Sec. 19 (drivers and chauffeurs); *Georgia*, Gen. Laws 1931, Part I, Title III, No. 12, Sec. 25 (drivers); *Idaho*, Idaho Code Ann. 1932, Sec. 59-807; Public Utilities Comm., Rule 33 (drivers and operators); *Illinois*, Laws 1933, Sec. 55d (operators); *Indiana*, Acts 1935, Ch. 287, Sec. 31 (a) (drivers and operators); *Iowa*, Code 1935, Sec. 5016.01 (drivers and operators); *Kansas*, Gen. Stats. Ann. 1935, Secs. 66-1, 129; Corporation Comm., Rule 35 (operators and drivers); *Kentucky*, Acts 1932, Ch. 104, Art. IV, Sec. 7 (drivers and chauffeurs); *Maine*, Laws 1935, Ch. 146, Sec. 8 (A) (drivers); *Massachusetts*, Acts 1933, Ch. 372, Sec. 27; Acts 1934, Ch. 264, Sec. 9 (drivers); *Michigan*, P. A. 1931, No. 129, Sec. 1 (drivers); *Minnesota*, Laws 1933, Ch. 170, Sec. 16; Rules and Regulations of Railroad and Warehouse Commission, Rule 17 (drivers); *Mississippi*, Acts ~~1932~~, Ch. 332, Sec. 7 (operators); *Missouri*, Laws 1931, P. 304-316, Sec. 5274; Public Serv. Comm., Rule 57 of Gen. Order 27 (drivers); *Nebraska*, Acts 1931, Ch. 102, Sec. 1 (drivers); *Nevada*, Laws 1933, Ch. 65, Sec. 1 (drivers); *New Hampshire*, Laws 1933, Ch. 106, as amended by Ch. 169, Sec. 8 (drivers); *New Mexico*, Laws 1933, Ch. 61, Sec. 2 (drivers and chauffeurs); *New York*, Laws 1932, Ch. 471, Sec. 167 (drivers); *North Carolina*, Code of 1935, Sec. 2613 (p); Rule 83½ effective July 1, 1933 (drivers); *North Dakota*, Laws 1933, Ch. 164, Sec. 27 (drivers and helpers); *Ohio*, Laws 1933, Secs. 614-97a, 614-117 (drivers and helpers); *Oregon*, Laws 1933, Ch. 429, Sec. 8 (2) (drivers, operators, and helpers); *Rhode Island*, P. L.

especially in view of the fact that one of the purposes of Congress in passing the Motor Carrier Act of 1935 was to harmonize interstate and intrastate motor carrier transportation and thereby eliminate the advantage theretofore appertaining to interstate carriers by reason of their freedom from regulation. This purpose is clearly shown in the testimony of Commissioner McManamy before the Senate Committee on Interstate Commerce. Mr. McManamy stated:

A further reason [for empowering the Interstate Commerce Commission to establish qualifications and maximum hours of service in the case of employees of interstate common and contract carriers] is that the regulations of many of the States contain such provisions and it would be unfair to allow interstate carriers to operate in disregard of such provisions. It is my view, therefore, that definite hours of service provisions should be included in the bill (Hearings on S. 1629, 74th Cong., 1st Sess., p. 123).

1933, Ch. 2023, Sec. 1 (drivers); *South Carolina*, Code 1932, Sec. 8516; Railroad Comm., Rule 65 (drivers and operators); *South Dakota*, Laws 1933, Ch. 140, Sec. 1 (drivers and chauffeurs); *Tennessee*, Laws 1933, Ch. 19, Sec. 6; Laws 1933, Ch. 119, Sec. 4; Railroad and Public Utilities Comm., Rule 58 (drivers and operators); *Texas*, Acts 1931, Ch. 277, Sec. 6cc (drivers and helpers); *Utah*, Acts 1933, Ch. 53, Sec. 24; Public Utilities Comm., Rule 36 (drivers and operators); *Virginia*, Laws 1932, Ch. 342, Sec. 90 (drivers); *Washington*, Laws 1935, Ch. 184, Sec. 18 (drivers and operators); *Wis-*

The majority opinion states (R. 42) that "there were also in effect in a majority of the states some sort of legislation covering, with diversity of detail and lack of uniformity, hours of service of employees, *including* drivers of motor vehicles. It is not unreasonable, in these circumstances, to assume that Congress, aware of the problem as it applied to interstate commerce and the advisability of uniformity, chose to place upon the Commission the details of its solution." (Italics supplied.) But, as has already been pointed out, the forty States which possessed statutes regulating hours of service of employees of intrastate motor carriers limited their scope to drivers and helpers. The statutes which the court below apparently had in mind when it made the statement just quoted, were statutes regulating maximum hours of service of employees in industry generally.¹⁶ At the time in question, thirty-eight states did possess some such

consin; Laws 1933, Ch. 488, Secs. 194.18, 194.36 (drivers); Wyoming, S. L. 1935, Ch. 65, Sec. 64 (drivers).

¹⁶ The court's conclusion was apparently based on the following statement at page 13 of the brief of appellees filed in the district court:

"With further reference to the alleged lack of legislative standards, the Commission referred in *ex parte* MC-28 to the fact that 44 states had some kind of regulations covering hours of service for drivers of motor vehicles. It failed to state that 38 states have regulations covering hours of service for various other employees (see U. S. Bureau of Labor Statistics Bulletin No. 616)."

statute, but the significant fact which apparently escaped the Court was that all these state statutes applied exclusively to women or minors,¹⁷ or, where they applied to men, were confined to specifically enumerated industries or occupations, such as mining, quarrying, and manufacturing.¹⁸ Consequently, these statutes could have no possible relevance to the Motor Carrier Act.

4. *The power to regulate was delegated, without specific standards, to a body expert in transportation matters alone.*—From its creation in 1887 the Interstate Commerce Commission has devoted itself to problems directly connected with transportation. In this field the Commission has had long experience fitting it for the task of prescribing, from the standpoint of safe and efficient operation, qualifications for employees of all types of carriers. And in carrying out its duties of enforcement under the Hours of Service Act, the Commission has had experience in the regulation

¹⁷ See Bulletin of the Women's Bureau, No. 156, "State Labor Laws for Women," Part I—Summary (1937), pp. 1-6. For a digest of applicable legislation as of March 31, 1938, see Bulletin of the Women's Bureau, No. 156—II, "State Labor Laws for Women," Part II, Analysis of Hour Laws for Women Workers (1938), pp. 1-19.

¹⁸ Bulletin No. 616, Bureau of Labor Statistics (1936) at page 1075. Although "common carriers" are included in the language of the Nebraska, Nevada, and North Dakota statutes, these laws have been applied only to railroad employees and seem definitely limited to them.

of hours of labor directed to the end of safety of operation. But the Commission is wholly without experience in regulating qualifications of employees generally, or hours of labor upon the basis of general social and economic criteria. It cannot lightly be assumed that Congress meant to take the Commission out of its customary field and into the field of prescribing qualifications and maximum hours of service for innumerable classes of employees of common and contract motor carriers, ranging from the office boys and stenographers through dispatchers, freight solicitors, terminal employees, warehousemen and numerous types of clerks, to the more highly paid employees of a professional and executive character such as attorneys, accountants, taxation experts, and corporation officials. The difficulties which it would face in exercising such powers were summarized by the Commission in its opinion in *Ex parte No. MC-28*, 13 M. C. C. 481, in which it held that Congress had not foisted these duties upon it. The Commission stated (pp. 485-486):

The qualifications for drivers so prescribed, for the particular purpose in view, have been accepted by the industry as practical and reasonable and have been adopted by the officials of a number of States. Our experience and the study we necessarily made in connection with the administration of the Motor Carrier Act qualify us to prescribe such regulations, to promote safety of op-

eration. Quite the contrary would be true if we were called upon to prescribe general qualifications for all employees of such carriers. In the case of clerks, salesmen, and employees acting in an executive capacity, physical infirmities have little, if any, effect upon the ability of an employee to perform satisfactory work. Education and training are important qualifications for such employment, but other and more intangible factors are of like importance. An employee's personality, appearance, ambition, and industry are valuable and important attributes. It would be a very difficult task, and one wholly foreign to the Commission's normal functions, to prescribe standards of such qualifications. It is our opinion that, if the statute be interpreted to give us the power to prescribe general qualifications for all employees, it would lead to an unreasonable if not an absurd result, and we must, therefore, under the rule of statutory construction already referred to, determine the intent of Congress from the legislative history of the enactment and consideration of the purposes of the act as a whole.

The court below points out that it would be within the *power* of Congress to impose this burden upon the Commission.¹⁹ No contention to the con-

¹⁹ The court sought to minimize the difficulties imposed upon the Commission by stating (R. 42-43) that its "fear that it may be called upon to establish qualifications for executive officials, solicitors, and lawyers, is overstrained. None of these classes is within the category of 'employees'".

trary was ever made by the appellants. But the extent of the burden constitutes strong evidence that Congress did not intend it. Nor is it likely that such extraneous duties would have been heaped upon the Commission without even having been mentioned in the Committee reports or on the floor of Congress.

In addition, had Congress intended to place upon the Commission the duty to prescribe qualifications and maximum hours of service for *all* employees of common and contract motor carriers, some Congressional direction to aid the Commission would

as that word is used in public service or labor legislation." But the statutes characterized by the court as "public service or labor legislation" do not support its position. Thus, the Fair Labor Standards Act, June 25, 1938, c. 676, Sec. 3, 52 Stat. 1060 (29 U. S. C., Supp. V, Sec. 203 (e)); the Railway Labor Act, May 20, 1926, c. 347, 44 Stat. 577, as amended (45 U. S. C., Sec. 151); the Railroad Retirement Act, August 29, 1935, c. 812, 49 Stat. 967, as amended (45 U. S. C., Supp. V, Sec. 228a (b)); and the Social Security Act, August 14, 1935, c. 531, 49 Stat. 620, Sec. 1101, as amended (42 U. S. C., Supp. V, Secs. 1107, 1301 (a) (6)), all contain definitions of the word "employees" which include professional, executive, administrative, and supervisory employees. Under the Railway Labor Act, the railway carriers, in their reports to the Interstate Commerce Commission, list as "employees," attorneys, administrative employees, and executives if they are working full-time for the railroad. Similarly, Section 1101 (a) (6) of the Social Security Act defines "employees" to include officers of corporations. So too, the Fair Labor Standards Act provides a specific exemption in Section 13 (a) (1) for executive, administrative, and professional employees, thus indicating that in the absence of this specific exemption such employees would be entitled to the benefits of the Act.

have been expected, particularly in view of the Commission's lack of experience in the field. Congress, however, failed to lay down any standards of the sort traditionally surrounding the regulation of hours of work. In regulating hours of labor in the past, Congress has either prescribed safety of operation as a standard to guide administrative action (Civil Aeronautics Act of June 23, 1938, c. 601, Sec. 601, 52 Stat. 1007; Seamen's Act of March 4, 1915, c. 153, Secs. 2, 13, 14, 38 Stat. 1164, 1169, 1170-1184) or has itself prescribed the specific number of hours in the statute. Hours of Service Acts (Railroad), *supra*; Hours of Service Acts (Public Works), August 1, 1892, c. 352, 27 Stat. 340, as amended (40 U. S. C., Sec. 321); Act of June 19, 1912, c. 174, 37 Stat. 137 (40 U. S. C., Sec. 324); Walsh-Healey Act, June 30, 1936, c. 881, 49 Stat. 2036, 41 U. S. C., Supp. V, Sec. 35; Fair Labor Standards Act; *supra*. The one notable exception to this Congressional policy was the National Industrial Recovery Act. While there is no question of validity under the interpretation adopted below, it is hardly to be presumed that three months after the invalidation of the National Industrial Recovery Act, in part for want of sufficient standards, the Congress intended even in this narrower field to follow such an exception rather than its general policy.

The Government does not contend, as the court below implied, that the Motor Carrier Act would be unconstitutional if interpreted to include all em-

ployees of common and contract motor carriers. *Cf. Currin v. Wallace*, 306 U. S. 1; *Mulford v. Smith*, 307 U. S. 38; *United States v. Rock Royal Co-op, Inc.*, 307 U. S. 533. What the Government does contend is that Congress cannot be presumed to have intended to take the Commission out of its traditional sphere of action without standards of the sort with which Congress has in the past guided the regulation of hours of service.

II

THE LEGISLATIVE HISTORY AND PURPOSES OF THE FAIR LABOR STANDARDS ACT INDICATE THAT THE MOTOR CARRIER ACT WAS INTENDED TO PROVIDE FOR THE REGULATION OF MAXIMUM HOURS OF SERVICE OF ONLY THOSE EMPLOYEES WHOSE DUTIES AFFECT SAFETY OF OPERATION

The Fair Labor Standards Act was not passed until three years after the enactment of the Motor Carrier Act. The legislative history and purposes of the Fair Labor Standards Act do, however, aid in the interpretation of the Motor Carrier Act insofar as they throw light upon the general policy and methods of Congress in regulating hours of labor.

Section 7 (a) of the Fair Labor Standards Act provides that no employer shall employ any employee engaged in interstate commerce or in the production of goods for interstate commerce for a workweek longer than 44 hours during the first year from the effective date of the Act, unless such employee receives compensation for his employ-

ment in excess of 44 hours a week at a rate not less than one and one-half times the regular rate at which he is employed. The maximum workweek became 42 hours on October 24, 1939, and will become 40 hours on October 24, 1940.

Section 13 (b) (1) exempts from these provisions employees of motor carriers subject to the jurisdiction of the Interstate Commerce Commission.²⁰ The legislative history of that Section demonstrates that Congress enacted it in the belief that it was exempting truck drivers. The statement of the General Counsel of the American Trucking Associations, Inc., before the Joint Committee considering the Fair Labor Standards Bills, contains no less than sixteen references to "drivers" (Joint Hearings of the Committee on Labor of the House and Committee on Education and Labor of the Senate, on H. R. 7200 and S. 2475, 75th Cong., 1st Sess., pp. 743-751). That it was drivers that Congress intended to exempt is further shown by the statement of Senator Black, the Chairman of the Senate Committee on Education and Labor which sponsored the bill, in debating the original motor carrier exemption. After referring to the

²⁰ "SEC. 13 (b). The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

exemption for railroad workers, the Senator continued:

The amendment of the Senator from New Jersey [Mr. Moore] would apply the same principle to *truck drivers* insofar as hours of labor are concerned. It is my understanding that the hours have been regulated by the Interstate Commerce Commission recently. * * * That has occurred since the hearings before the committee. The committee were of the opinion, when we originally took up the bill for consideration, that it was exceedingly important that the *long hours of truck drivers* should be regulated in the interest of public safety. That had not been done by any other governmental agency at the time of the hearings. Consequently the amendment was not adopted by the committee. (81 Cong. Rec., p. 7875). [Italics supplied.]

Senator Black's statement, made on July 30, 1937, referred to the report of July 15, 1937, of the Examiner of the Interstate Commerce Commission, recommending regulations prescribing maximum hours for drivers of common and contract motor carriers.²¹ In the opinion of the Commission, on December 29, 1937, affirming the Examiner's report and prescribing a 60-hour workweek for drivers of common and contract motor carriers, the Commission stated the position to which it has since adhered—that its power is limited to those

²¹ The regulations became effective July 12, 1938.

employees whose duties affect safety of operation. "Until the Congress shall have given us a more particular and definite command in the premises," the Commission stated, "we shall limit our regulations concerning maximum hours of service to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations" (3 M. C. C. 665, 667). Thus, Congress was aware of the Commission's interpretation of Section 204 (a) (1) and (2) of the Motor Carrier Act, which is under review here, at the time it passed the Fair Labor Standards Act. *Cf. New York, N. H. & H. R. Co. v. Int. Com. Comm.*, 200 U. S. 361; *United States v. Penna. R. Co.*, 242 U. S. 208; *Louisville & N. R. Co. v. United States*, 282 U. S. 740, 757; *United States v. Chicago, N. S. & M. R. Co.*, 288 U. S. 1.

A comparison of the wording of Section 13 (b) (2) of the Fair Labor Standards Act with the wording of Section 13 (b) (1) of that Act leads to the same conclusion as does the legislative history of the Act. Section 13 (b) (2) exempts "any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act," i.e., any employee of a railroad. In contrast, Section 13 (b) (1) exempts "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service" under Section 204 of the Motor Carrier Act. The court below

(R. 43) explained away these differences in language on the ground that, had Section 13 (b) (1) been drafted in the form used in Section 13 (b) (2), all the employees of private carriers, including those not engaged in motor carrier operations, would have been exempted. That this was not the reason for the difference in language is conclusively shown by the fact that the motor carrier exemption originally contained in the Fair Labor Standards Act applied only to *common carriers*, yet used similar language to that now contained in Section 13 (b) (1). Thus the term "employee," was defined to exclude:

* * * any employee of any common carrier subject to the qualifications and maximum hours of service provisions of the Motor Carrier Act (S. 2475, Section 2 (a) (7), August 2, 1937, 75th Cong., 1st Sess.; see also H. Rep. No. 1452, 75th Cong., 1st Sess., p. 11).

It would have been easy for Congress, had it intended to exempt all employees of common and contract carriers, to have exempted, in Section 13 (b) (1), "any employee of a common or contract motor carrier and any employee of a private motor carrier subject to the qualifications and maximum hours of service provisions of the Motor Carrier Act." From the language which was used, it is apparent that Congress intended a narrower exemption in Section 13 (b) (1) than in Section 13 (b) (2). Nor is this surprising, since Congress accorded each of

the four transportation industries different exemptions. Under Section 13 (b) (2) *all* railroad employees are exempt from the maximum hour provisions, but are subject to the minimum wage provisions of the Fair Labor Standards Act, as are employees of motor carriers. Under Section 13 (a) (3) *certain* employees of water carriers—those classified as “seamen”—are exempt from *both* wage and hour provisions. Under Section 13 (a) (4) *all* employees of carriers by air are exempt from *both* wage and hour provisions.

Finally, apart from any question of legislative history or of language, the regulation of hours of service of employees of motor carriers whose duties do not affect safety of operation is consistent with the purposes of the Fair Labor Standards Act and is inconsistent with the purposes of the Motor Carrier Act and with the traditional jurisdiction of the Interstate Commerce Commission. This is readily seen from a comparison of the two acts in the light of the purposes sought and the methods used to effectuate those purposes.

(a) *Purpose.*—The Motor Carrier Act seeks to promote the development of an adequate and efficient system of transportation by motor carrier. Motor Carrier Act, Section 202. The Fair Labor Standards Act seeks to eradicate labor conditions, resulting from long hours and low wages, which are detrimental to the health, efficiency, and general well-being of workers. Fair Labor Standards Act, Section 2. The regulation of maximum hours where safety on the highways is not involved clearly falls

within the purpose of the latter statute rather than of the Motor Carrier Act.

(b) *Regulatory Agency*.—The agency chosen by Congress to regulate hours of service under the Motor Carrier Act has no experience in the regulation of hours of labor of employees whose duties do not affect safety of operation. The agency chosen to regulate hours of work under the Fair Labor Standards Act has the duty of regulating the hours of labor of millions of employees whose work is substantially similar to that of the employees involved in this case.

(c) *Type of Regulation*.—In the field of transportation, regulation of hours of service has traditionally taken the form either of a specific limitation on the number of hours to be worked or of a grant to a regulatory agency of power to prescribe maximum hours of labor to the end of "safety of operation." See *supra*, p. 41. In fields other than transportation, Congress has regulated hours of work by prescribing specific maximum hour standards. Illustrative is the Fair Labor Standards Act, which sets maximum work-weeks of 44, 42, and 40 hours. The absence of any specific maximum hour standards for "nonsafety" employees of common and contract carriers in the Motor Carrier Act clearly evidences the intention of Congress to subject such employees to the general regulation of industrial employees contained in the Fair Labor Standards Act.

In the light of the purposes of the two Acts and of the methods adopted to achieve those purposes,

to hold that Congress intended that the Interstate Commerce Commission rather than the Wage and Hour Division should have jurisdiction over the employees of common and contract motor carriers whose duties do not affect safety of operation is to impute to the Congress a perversity not lightly to be ascribed to the national legislature.

CONCLUSION

It is respectfully submitted that the majority of the court below erred in holding that the power of the Interstate Commerce Commission under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, is not limited to those employees whose duties affect safety of operation.

Respectfully submitted.

- ✓ FRANCIS BIDDLE,
Solicitor General,
- ✓ THOMAS HARRIS,
Attorney,
Department of Justice.
- ✓ DANIEL W. KNOWLTON,
Chief Counsel,
- ✓ NELSON THOMAS,
Attorney,
Interstate Commerce Commission.
- ✓ GEORGE A. McNULTY,
General Counsel,
- THOMAS TONGUE,
- EDWARD J. FRUCHTMAN,
Attorneys,

Wage and Hour Division, Department of Labor.

APRIL, 1940.

APPENDIX

The Motor Carrier Act, 1935, c. 498, 49 Stat. 543,
(49 U. S. C., Supp. V, Sec. 301 ff.):

Declaration of policy and delegation of jurisdiction

SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part [49 U. S. C., Supp. V, Sec. 302 (a)].

* * * * *

(c) Nothing in this part shall be construed to affect the powers of taxation of the sev-

eral States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof [49 U. S. C., Supp. V, Sec. 302 (c)].

Definitions

SEC. 203. (a) As used in this part—

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise [49 U. S. C., Supp. V, Sec. 303 (a) (17)].

General duties and powers of the commission

SEC. 204.

(b) The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this chapter, shall have no force or effect after this section becomes effective [49 U. S. C., Supp. V, Sec. 304 (b)].

Administration

Sec. 205.

(h) Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under part I: *Provided*, That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction. [49 U. S. C., Supp. V, Sec. 305 (h)].

*Investigation of motor vehicle sizes, weights,
and so forth*

SEC. 225. The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter [49 U. S. C., Supp. V, Sec. 325].